

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

**FARM SANCTUARY; ANIMAL LEGAL  
DEFENSE FUND; ANIMAL OUTLOOK;  
ANIMAL WELFARE INSTITUTE;  
COMPASSION IN WORLD FARMING;  
FARM FORWARD; and MERCY FOR  
ANIMALS, INC.,**

Plaintiffs,

v.

**SONNY PERDUE**, in his official capacity as  
Secretary of Agriculture; and **UNITED  
STATES DEPARTMENT OF  
AGRICULTURE; FOOD SAFETY AND  
INSPECTION SERVICE**; and **PAUL  
KIECKER**, in his official capacity as Food  
Safety and Inspection Service Administrator,

Defendants.

Civil Action No.: 6:20-cv-06081

The Honorable Frank P. Geraci, Jr.

**DECLARATION OF KELLY  
FORTINO IN SUPPORT OF  
PLAINTIFFS' OPPOSITION  
TO MOTION TO DISMISS**

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I, Kelly Fortino, declare as follows:

1. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath.
2. I live in Grayling, Michigan.
3. I am a member of Farm Sanctuary, and I rely on Farm Sanctuary for information about animal agriculture and slaughter practices, including how those practices affect my personal health, public health, and animal welfare. I first became a member of Farm Sanctuary in 2012.
4. I am submitting this declaration in support of Plaintiffs' challenge to Defendants' failure to comply with Congress's 2002 mandates regarding pigs at slaughterhouses who are unable to rise or walk, and Defendants' denial of a 2014 petition for rulemaking seeking a regulation

banning the slaughter of these animals for human consumption. Pigs in this condition are referred to as “nonambulatory,” “nonambulatory disabled” (NAD), or “downed” pigs.

5. I am sixty-four years old. I retired from a career in social work last year.

6. I eat pork products about twice a month on average, both at home and away from home.

7. I have learned from Farm Sanctuary that every year more than 500,000 pigs arrive at slaughterhouses in the United States unable to stand or walk, that additional pigs become unable to stand or walk after arriving at slaughterhouses, and that the U.S. Department of Agriculture allows these animals to be slaughtered for human consumption. I understand from Farm Sanctuary that extensive evidence indicates that pigs who are unable to stand or walk are more likely to harbor human-transmissible disease than ambulatory pigs, including diseases that are drug-resistant and diseases that can be fatal. I have also learned from Farm Sanctuary that downed pigs are often set aside in pens for prolonged periods of time where they are unable to rise from the feces-ridden floors before ultimately being slaughtered for human consumption, significantly compounding disease risks. I understand that eating meat from downed pigs can transmit *Salmonella*, *Campylobacter*, *Yersinia enterocolitica*, *Listeria monocytogenes*, and other diseases.

8. The presence in the market of pork from downed pigs puts me at an increased risk of eating pathogenic meat. I am concerned about this increased risk, especially because I have underlying health issues and because of my age. I have been sickened by food poisoning in the past, in an incident that infected many people and even hospitalized some of them. I do not want to experience this again.

9. I am also concerned about my risk of exposure to swine flu, a highly contagious airborne disease that is transmissible from pigs to humans, and then to other humans. I understand from

Farm Sanctuary that downed pigs are also much more likely to carry swine flu subtypes H1N1 and H3N2 than other pigs, that H1N1 is transmissible between pigs and humans, and that, according to Centers for Disease Control and Prevention estimates, the 2009 H1N1 pandemic sickened 60.8 million Americans, killing 12,469 people. I am particularly concerned about exposure to swine flu because I have family members who are farmers in Nebraska and who live near many pig farms. I also understand from Farm Sanctuary that there are nineteen slaughterhouses in my home state of Michigan that slaughter pigs, including one that is less than fifty miles from Grayling, where I live. These concerns are especially heightened for me in this time of the COVID-19 pandemic, especially in light of outbreaks at slaughterhouses across the country, including one in Michigan where at least sixty workers contracted the disease and one died.

10. In addition to my concerns about my exposure to diseases, I am concerned about purchasing pork products that come from downed pigs because of humane handling issues. I understand from Farm Sanctuary that these animals are often cruelly forced to move, including through beatings, kicking, dragging, and electro-shocking. I also understand from Farm Sanctuary that downed pigs are often set aside in pens for prolonged periods, in the hopes that they might eventually rise, and are often neglected in these pens, including by being overcrowded and denied access to veterinary care, food, water, and protection from the elements. When I buy meat products, I try to buy products that come from animals who are well treated, and I especially look for organic and local products. I understand from Farm Sanctuary that even local and organic meat products come from slaughterhouses where the U.S. Department of Agriculture allows downed pigs to be slaughtered, and that there is no way to be sure that I am not purchasing meat products from downed pigs who may have suffered in the ways described

above. I do not want my purchases to support this suffering in any way.

11. My exposure to these risks would be reduced by a court order compelling the Defendants to follow through on Congress's 2002 statutory mandates regarding downed pigs and setting aside Defendants' denial of Plaintiffs' rulemaking petition.

In accordance with 28 U.S.C. § 1746 and under penalty of perjury, I swear that the foregoing is true and correct.

04/29/2020

Executed on \_\_\_\_\_

*Kelly Anna Fortino*  
/s/ \_\_\_\_\_  
Kelly Fortino